

under the 2010 stage of the plan is about 49,000 jobs, or about 24 percent, greater than the level envisioned under the intermediate-growth projection, and about 9,000 jobs, or about 3 percent, less than the level envisioned under the high-growth projection.

PLAN IMPLEMENTATION

The recommended County land use plan described in the previous section of this chapter provides a design for the attainment of the urban and rural development and open space preservation objectives recommended by the Waukesha County Development Plan Advisory Committee, as set forth in Chapter IX of this report. In a practical sense, however, the plan is not complete until the steps required to implement the plan, or to convert the plan into action policies and programs, are specified. The balance of this chapter is therefore presented as guide to the implementation of the recommended plan. It describes additional local planning that should be undertaken to refine and detail the County land use plan; identifies appropriate application of public land use controls, including zoning ordinances, land subdivision control ordinances, and official mapping ordinances required to implement the plan; and describes the potential purchase or transfer of development rights as a means of preserving open space lands, including rural-density residential and other agricultural lands, and particularly prime agricultural lands within the County.¹⁵

Of particular importance in implementation of the County land use plan is the maintenance of the rural character of areas of the County located beyond the proposed urban service areas. Many options exist regarding the specific pattern of land uses which may be accommodated and to the application of zoning and other measures to ensure the maintenance of rural character. The last section of this chapter sets forth guidelines for planning in rural areas and presents recommendations for the use of zoning to carry out such plans.

¹⁵*Implementation of the County land use plan should begin with formal adoption of the County development plan by the Waukesha County Board of Supervisors and the local units of government in the County. Recommendations with respect to the adoption of the land use element and other elements of the County development plan are set forth in Chapter XIV of this report.*

As envisioned under the County land use plan, the County would consist of three major types of areas: urban development areas, rural development areas, and prime agricultural areas. The urban development areas would consist of those portions of the County that are proposed to be provided with urban facilities and services, particularly public sanitary sewer service. Prime agricultural areas would consist of those portions of the County comprised of prime agricultural lands that are proposed to be preserved in agricultural use. The rural development areas would consist of the balance of the County, being envisioned to remain rural in appearance, but subject to residential and related development at rural densities. The boundaries of these areas are identified on Map 91. This map serves as a useful reference point with respect to the plan implementation recommendations presented in this section.

Additional Planning

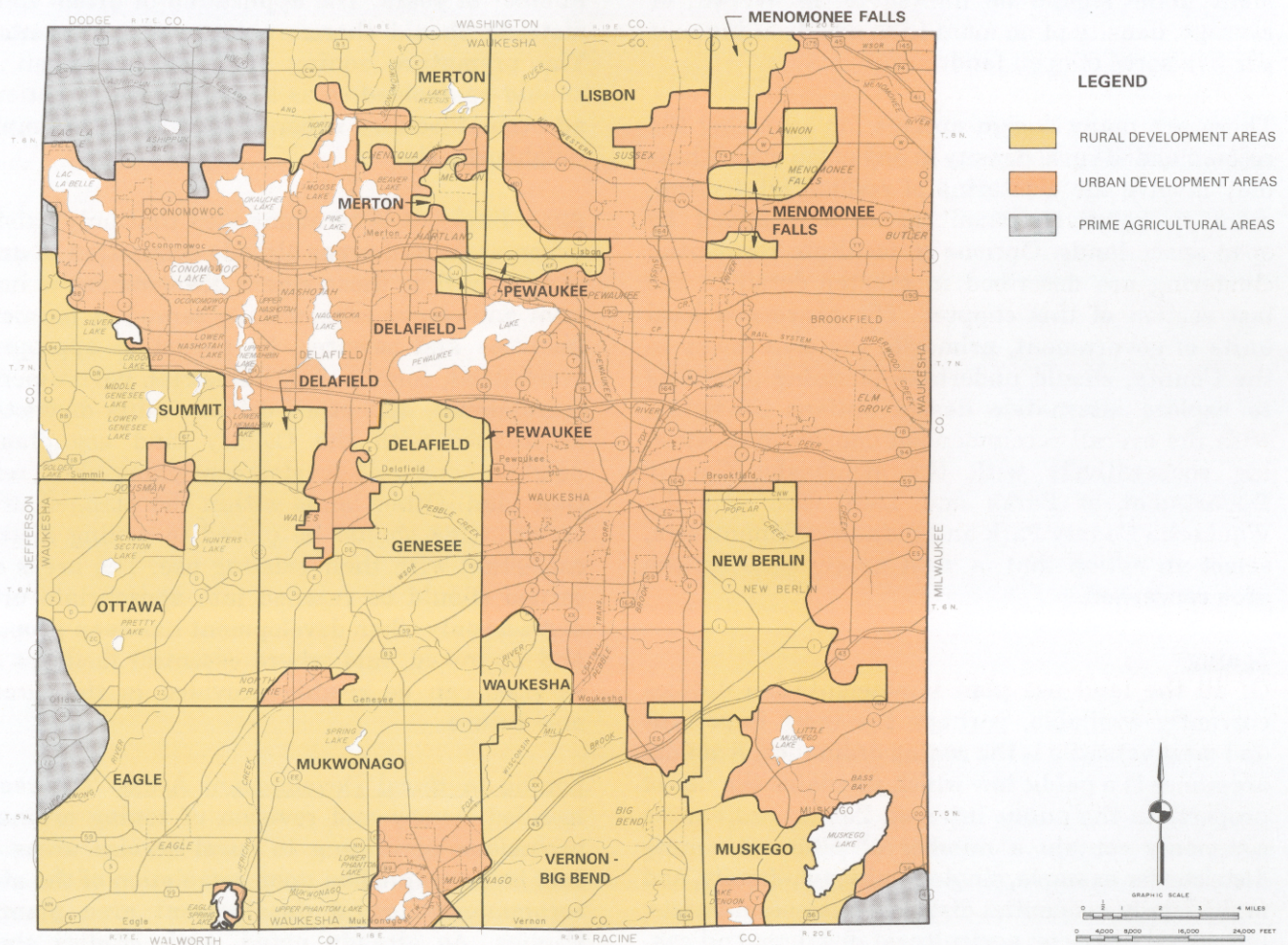
The County land use plan is, in effect, a recommended community-level land use plan for each of the cities, villages, and towns in the County. Additional planning to refine and detail the plan is needed in both urban and rural areas.

Planning in Urban Development Areas: Under the recommended County land use plan, intensive residential, commercial, industrial, and governmental and institutional land uses are proposed to be located primarily within planned urban service areas, which would be provided with basic urban facilities and services, including, most importantly, public sanitary sewer service (see Map 91). An important step required for implementation of the recommended plan as it pertains to the proposed urban development areas is the preparation of detailed development and redevelopment plans for the residential neighborhoods and special-purpose districts which comprise the urban service areas. Within the context of the County land use plan, detailed development plans should be prepared for each neighborhood or special-purpose district where significant growth or change may be expected over the next two decades.

Neighborhood and special-purpose development district boundaries have already been delineated for some communities as part of the locally adopted land use plans incorporated into the recommended County land use plan. Where this is not the case, neighborhood units should be identified in accordance with sound planning practice. In this respect, neighborhoods should be bounded by such readily identifiable and relatively permanent features as

Map 91

DEVELOPMENT AREAS IN WAUKESHA COUNTY



Source: SEWRPC.

arterial streets, railways, major parks or parkways, major institutional lands, bodies of water, or other natural or cultural features which serve to physically separate each unit from surrounding units.

Neighborhood plans should designate the locations and alignments of future collector and land-access streets, pedestrian paths and bicycle ways, and the configuration of individual blocks and lots. The internal street pattern of the neighborhoods should discourage the penetration of the neighborhood by through traffic; facilitate access to industrial building sites by vehicular and pedestrian travel; and facilitate the provision of sanitary sewerage, water supply, and stormwater drainage facilities. Neighborhood plans should also precisely identify areas to be protected from intensive urban development for environmental reasons and should indicate areas to be reserved for drainageways and utility easements. Such plans should also identify specific

sites for neighborhood parks, schools, and retail and service centers.

Similarly, detailed redevelopment plans should be prepared for each neighborhood or special-purpose district showing signs of land use instability and deterioration. Such plans should identify any areas recommended for redevelopment to a different use, areas recommended for rehabilitation, any local street realignments or improvements, and other public utility and facility improvements.

Planning in Rural Development Areas: Under the recommended County land use plan, a substantial portion of the County would consist of rural development areas (see Map 91). These areas would generally maintain a rural appearance, with new development limited primarily to residential uses at densities consistent with the maintenance of the rural character of the areas, and therefore at

densities which would not require the provision of costly urban facilities and services. In this respect, new residential development within rural development areas should be limited to an overall, or average, density of no more than one dwelling unit per five acres of open land.

There are many design options for achieving the recommended rural density in any given area. These may involve the clustering of residential development in relatively small areas surrounded by open space lands. Options to facilitate residential clustering are described in greater detail in the last section of this chapter. The concerned local units of government, primarily the civil towns in the County, should undertake planning programs to explore alternative design options consistent with the overall recommended density, and working cooperatively with the Waukesha County Department of Parks and Land Use and the Waukesha County Park and Planning Commission, select an option that is most appropriate for the area concerned.

Zoning

Of all the land use plan implementation devices currently available, perhaps the most important and most versatile is the zoning ordinance. A zoning ordinance is a public law which regulates the use of property in the public interest. Zoning ordinances commonly contain a number of different zoning districts; for example, single-family, two-family, and multi-family residential districts; business districts; industrial districts; agricultural districts; and conservancy districts. The zoning ordinance indicates specific uses permitted within each district and typically establishes minimum lot sizes, maximum building heights, and building setbacks for each district.

Existing zoning ordinances in Waukesha County were described and analyzed in Chapter VI of this report. Each local unit of government in the County should review its existing zoning regulations and zoning district map and amend the ordinance text and map as necessary to implement the recommended County land use plan. General zoning guidelines to be followed in this review and revision of existing zoning are set forth below.

Zoning in Urban Development Areas: The key to sound zoning administration within urbanizing areas is the proper staging of development over time. While the primary function of zoning should be to implement a land use plan, this does not mean that the zoning district map should directly and immediately reflect the land use plan. It is important to recognize that the recommended

County land use plan is a long-range plan and that many areas proposed for residential, commercial, and industrial use will not be developed for a number of years. The application of urban zoning districts should therefore proceed incrementally. The premature zoning of lands for urban use should be avoided so as to prevent the creation of additional isolated urban enclaves and incomplete neighborhoods.

Accordingly, it is recommended that only existing urban areas and areas already committed to urban use, as well as those where development is imminent and can be economically served by municipal facilities and services, be placed in appropriate residential, commercial, industrial, governmental, recreational, and other urban zoning districts in accordance with the County land use plan or neighborhood unit development plans which refine that plan. Other lands within the planned urban service area should be placed in zoning districts consistent with their existing use. The areas concerned should be rezoned into appropriate urban districts only when development has been proposed and approved, and where essential facilities and services can be readily provided in the foreseeable future.

Zoning in Rural Development Areas: The recommended review and revision of zoning ordinance provisions pertaining to rural service areas can best be accomplished upon completion of the aforementioned rural development area planning studies. As already noted, such studies should recommend a design alternative that would seek to maintain the rural character of the area, particularly by limiting new residential development to no more than one dwelling unit per five acres of open land, which can be calculated using environmental corridor lands for gross density purposes. Upon completion of such a study for a town, the local zoning ordinance should be revised in accordance with the study recommendations. Importantly, and as may be found appropriate, local zoning should provide for clustered residential development or "lot averaging,"¹⁶ or both, in rural

¹⁶With "clustered" residential development, a lot size reduction allows dwelling units to be concentrated on a portion of a site while keeping the rest of the site open. With "lot averaging," an overall density of five acres per dwelling unit is maintained by varying lot sizes. The lot area that is taken from one lot is transferred to one or more other lots, so that an average minimum lot size is maintained within a particular development site.

areas. Both techniques permit flexibility in site design for the benefit of preserving rural areas and environmentally sensitive lands. Undeveloped agricultural and open space lands should be placed in zoning districts consistent with their existing use and rezoned into residential or other districts only when development which conforms to the purpose and intent of the County land use plan is imminent, having been proposed and approved. Further description of the recommended zoning in rural-density residential and other agricultural areas is provided in the last section of this chapter.

Zoning in Prime Agricultural Areas: Areas which have been designated prime agricultural land under the recommended County land use plan should be placed into an exclusive agricultural zoning district, which essentially permits only agricultural and agriculture-related uses. Such a district should provide for a minimum parcel size of 35 acres and prohibit incompatible urban development. No structure or improvement should be permitted unless it is consistent with agricultural use. In general, residences should be limited to those required for the farmer, farm laborers, and parents and children of the farmer. Most of the prime agricultural lands recommended for preservation under the plan have already been placed in such exclusive agricultural zoning districts.

Zoning in Environmentally Sensitive Areas: Areas which have been identified as primary environmental corridors, secondary environmental corridors, or isolated natural resource areas occur in both urban and rural development areas and in prime agricultural areas. Environmental corridors and isolated natural resource areas should be placed in one of several zoning districts, depending upon the type and character of the natural resource features to be preserved and protected. All lakes, rivers, streams, wetlands, and associated undeveloped floodlands and shorelands should be placed in lowland conservancy or floodplain protection districts. Development of, and around, man-made bodies of water created incidental to nonmetallic mining should be governed by the required site operations and reclamation plans. Upland woodlands and areas of steep slopes should generally be placed in appropriate upland conservancy, rural-density residential, or park and recreation districts. Placement of the environmental corridors in these zoning districts would substantially ensure the preservation of these areas in essentially natural open uses.

While calling for the preservation of primary environmental corridor lands, the County land use plan recognizes that certain primary environmental

corridor lands provide highly desirable settings for very low-density residential use, as well as recreational development, and that such uses may be accommodated within the corridors without jeopardizing the overall ecological integrity of the corridors. Under local zoning, any residential development permitted in primary environmental corridors should be confined to the upland areas of the primary environmental corridors, excluding areas of steep slope. Residential development in such upland areas should be limited to a density of no more than one dwelling unit per five acres, with provision made as may be appropriate for clustering or lot averaging, and with specification of the maximum amount of lot area which may be disturbed. For example, zoning setting forth provisions for rural residential development in upland environmental corridor areas could specify a maximum percentage of lot area which may be disturbed by earthmoving, removal of vegetation for the building site, and for driveways.

The recommendations for the protection of environmentally sensitive areas pertain to primary environmental corridors. The protection of secondary environmental corridors and isolated natural resource areas should be at the option of the local unit of government concerned. Current Federal, State, and local natural resource protection regulations concerning wetlands, floodlands, shorelands, stormwater management, and erosion control, among others, may, however, effectively preclude development within the lowland portions of such corridors and areas.

The County land use plan also recognizes that streets and highways, utility lines and related facilities, mineral extraction sites and buffer areas for such sites, and engineered flood-control facilities may have to be accommodated within some environmental corridors. Local zoning ordinances should accommodate such facilities, but should require that the design and development of the facilities be sensitive to the protection of the existing resource features and should require that, to the extent possible following construction, disturbed areas be restored to preconstruction conditions.

In addition to the environmental corridors and isolated natural resource areas, the recommended County land use plan identifies other open space lands to be preserved. These consist of areas which are poorly suited for urban development, largely floodplains and areas covered by poorly drained soils and soils with high water table which do not meet the criteria for designation as environmental corridors or isolated natural resource areas. These

areas should also be placed in floodland zoning districts and lowland resource conservancy districts, as appropriate.

Zoning of Mineral Extraction Areas: Recognizing the need for the economical provision of mineral resources required to support continued urban development in the County, the recommended County land use plan identifies the lands currently owned or leased for mineral extraction purposes as well as adjacent lands with potential for mining activity. Such areas should be placed into zoning districts allowing mineral extraction use only upon completion of a comprehensive environmental assessment of the proposed mineral extraction activity, the preparation of a detailed operations plan, and the preparation of a detailed plan for site reclamation. The environmental assessment should identify, among other items, potential impacts on air, soil, and surface and groundwater resources; impacts on wetlands and woodlands; impacts on wildlife habitat; visual impacts; and impacts on streets and highways and other public facilities. The environmental assessment should also specify measures to mitigate objectionable environmental impacts. These measures could include, for example, use of planting strips and berms or walls to reduce noise and provide aesthetic screening, paving quarry entry roads, and controlling particulate emissions from handling and processing operations. Measures such as these should be incorporated into the detailed operations and reclamation plans as may be appropriate.

It is important to recognize that mineral extraction is an interim land use. Reclamation plans should generally provide for a return to the uses envisioned under the plan for the area prior to the extractive activity. Areas identified under the recommended County land use plan as rural-density residential and other agricultural land before the extractive activity should ultimately be used for rural residential development or agricultural or other open space use. Mineral extraction operators should meet minimum requirements with respect to financial assurances, as set forth in applicable State regulations.

It should be noted that 1993 Wisconsin Act 464, enacted in May 1994, provides for the establishment by the Wisconsin Department of Natural Resources of administrative rules setting forth standards for nonmetallic mining reclamation plans and local ordinances governing such reclamation; establishes certain minimum requirements for such local

ordinances; provides for mandatory enactment of such ordinances by counties; and also grants authority to enact such ordinances to cities, villages, and towns. Section 144.9407 of the Wisconsin Statutes, created by this Act, requires county and local nonmetallic mining reclamation ordinances to conform to standards to be set forth in Chapter NR 135 of the Wisconsin Administrative Code.

As indicated in Section 144.9407(3 and 4), a county, city, village, or town with a nonmetallic mining reclamation ordinance in effect on or before June 1, 1993, may maintain and administer that ordinance if the Wisconsin Department of Natural Resources finds that it is at least as restrictive as the model ordinance set forth in Chapter NR 135. If the Department determines that any part of the existing ordinance is not as restrictive as the model ordinance set forth in Chapter NR 135, the county, city, village, or town may amend the ordinance and re-submit it to the Department for review and approval. Following review and approval by the Department, the county, city, village, or town may not amend their ordinance to render it more restrictive than the model ordinance set forth in Chapter NR 135.

New ordinances must conform to standards set forth in Chapter NR 135; they are also subject to review and approval by the Department. County ordinances are to apply to the entire area of the County concerned, except within cities, villages, and towns that have enacted their own ordinances. Under Section 144.9407, counties must enact a nonmetallic mining reclamation ordinance within six months after the effective date of the administrative rules set forth in Chapter NR 135. Such administrative rules, however, had not been approved and adopted as of August 1, 1996.

Intergovernmental Agreements

Intergovernmental agreements may be defined as adopted arrangements between two or more local units of government to facilitate achievement of common goals or to further common interests. Such arrangements can prove useful in the implementation of the County land use plan in that they can facilitate sound urban development in areas along common municipal boundaries and can facilitate efficient provision of essential public facilities and services. There are basically two types of such agreements that are most commonly used among cities, villages, towns, and counties in Wisconsin that would be helpful in land use plan implementation: cooperative boundary agreements and inter-

governmental cooperation agreements, authorized under Sections 66.023 and 66.30, respectively, of the Wisconsin Statutes.

Cooperative boundary agreements may serve to abate or eliminate often long-standing conflicts with respect to planning, zoning, property-tax base, and ultimately, future urban development patterns between local units of government. In the absence of intergovernmental boundary agreements, development may proceed in a manner which is not in accord with the County development plan, nor in the best interests of the communities involved.

Under Section 66.30 of the Wisconsin Statutes, "Intergovernmental Cooperation," any municipality may contract with other municipalities for the receipt or furnishing of services or joint exercise of power or duties required or authorized by law. It should be noted that the term "municipality" in Section 66.30 refers to the State, counties, cities, villages, towns, school districts, sanitary districts, public library systems, regional planning commissions, and other governmental and quasi-governmental entities. The requirements and procedures set forth for intergovernmental cooperation are minimal and are intended to be liberally interpreted in favor of cooperative action among the agencies involved. Formal agreements under Section 66.30 are often undertaken for common provision of such essential public services as public sanitary sewer and water service, solid waste management, police and fire protection, inland lake protection and rehabilitation, public libraries, public transit; or for shared functions such as engineering, planning, and administration of land use regulations. Intergovernmental cooperation in this regard should be undertaken whenever an opportunity exists to provide essential public services and achieve an economy of scale which would reduce the cost of such services to the public. This may be especially effective in an area such as Waukesha County, with many communities located in close proximity to one another.

Under Section 66.023 of the Wisconsin Statutes, "Boundary Change Pursuant to Cooperative Plan," two or more adjacent municipalities, defined therein as cities, villages, and towns, may determine the boundary lines between themselves under a "cooperative plan" subject to approval by the Wisconsin Department of Administration. Section 66.023 sets forth the requirements and procedures for municipalities to follow in undertaking such agreements.

The process for achieving boundary agreements begins with each community involved adopting a resolution authorizing participation. The communities must then cooperatively undertake preparation of a plan which must include, for the areas concerned, elements pertaining to the physical development of the area; to urban facilities and services; to environmental impacts; to housing needs; and importantly, to boundaries. The planning period to be utilized must be specified and a public hearing must be held on the proposed plan. Following adoption of the cooperative plan by the communities involved, the plan is submitted to the Wisconsin Department of Administration for review and approval. Upon approval by the Department, the cooperative plan provisions with respect to the maintenance of existing boundaries; to changing boundaries and the timing of such changes; and to the delivery of services becomes a contract binding on the parties to the plan and have the force and effect of a contract. In addition, a boundary change ordinance is enacted pursuant to the plan by the local unit of government identified under the plan for enactment of such an ordinance.

Land Subdivision Ordinances

Land subdivision control ordinances are of particular importance to plan implementation since decisions concerning the subdivision of land are among the first official activities involving public policy as it applies to actually proposed development. Minimum requirements for subdivision plats are set forth in Chapter 236 of the Wisconsin Statutes. Cities, villages, towns, and counties are authorized under the Statutes to adopt subdivision control ordinances which are at least as restrictive as Chapter 236 to regulate the manner in which land is subdivided and prepared for development. Villages and cities can extend the applicability of their ordinances into extraterritorial areas. Counties can adopt land division ordinances governing land divisions throughout their unincorporated area.

Existing subdivision control ordinances in the County were described in Chapter VI of this report. As reported in Chapter VI, all but two civil divisions, the Villages of Chenequa and Elm Grove, both of which had little undeveloped land remaining in 1996, have adopted local land subdivision control ordinances. Waukesha County has adopted a subdivision control ordinance which governs land divisions within the statutory shoreland areas of the civil towns within the County.

Each city, village, and town in Waukesha County which has adopted a land division ordinance may use the County land use plan as a basis for the review of land subdivision plats and certified survey maps proposed within its plat approval area. Any proposed departures from the County land use plan should be carefully considered and approved only if such departures are found to be in the public interest.

Waukesha County should adopt a subdivision control ordinance which regulates land divisions throughout the unincorporated areas of the County, rather than only within the statutory shoreland area of the County. The Waukesha County Park and Planning Commission should likewise use the County land use plan as a basis for the review of subdivision plats and certified survey maps proposed within the unincorporated areas. County approval of subdivision plats should be conditioned upon conformance with the County land use plan.

Official Mapping

Official mapping powers granted to cities under Section 62.23(6) of the Wisconsin Statutes, by reference under Section 61.35 to villages, and by reference under and 60.22(3) to towns which have adopted village powers, provide a means for reserving land for future public use as streets, highways, parkways, railways, transit facilities, drainageways, parks and playgrounds. Cities and villages may include on their official maps streets, highways, waterways, railways, transit facilities, and parkways that extend beyond their corporate limits into adjacent areas where the municipality has statutory subdivision plat approval jurisdiction. The official map represents a particularly effective means to reserve land for future public use, once those lands have been precisely identified in detailed neighborhood unit or special purpose district development plans for urban areas or in rural area development plans.

Chapter VI of this report indicates that in 1993, 11 cities, villages, and towns in the County had adopted local official maps. All other cities, villages, and towns in the County should also prepare and adopt a local official map showing thereon lands needed for future public use. The local official map should be updated from time to time to incorporate the additional street and highway and other public land requirements identified in detailed neighborhood unit, special-purpose district, or rural area development plans as those plans are prepared over time.

Local official maps and the counterpart for counties, county highway width maps provided for under Section 80.64 of the Wisconsin Statutes, also provide an important and particularly effective means to reserve land for future use as arterial streets and highways. Recommendations with respect to the use of local official and county highway width maps to implement the recommended arterial street and highway system plan are presented in Chapter XII of this report.

Purchase or Transfer of Development Rights in Agricultural Land

Within the Southeastern Wisconsin Region, efforts to protect farmland from urban encroachment have historically relied upon the application of agricultural zoning districts intended to limit the use of farming areas to agriculture and agriculture-related uses. Other techniques, such as cluster subdivision design, combined with rural residential zoning, are beginning to be used, not primarily to preserve conventional agriculture in an area, but rather to preserve the rural appearance of the landscape and to avoid the need for more costly urban infrastructure. Maintenance of the rural appearance of the landscape requires the preservation of substantial areas of open space. Still other techniques, involving the voluntary sale or transfer of development rights in land, have been proposed to be used to supplement rural residential zoning.

Techniques involving the purchase of development rights (PDR) and the transfer of development rights (TDR) are based upon the premise that development rights are distinct attributes of land ownership which can be sold or otherwise transferred, similar to other rights associated with land, such as mineral rights or air rights. It is important to recognize that no widespread agreement exists on the nature or extent of development rights that may be inherent in fee-simple ownership of land. There is general agreement that landowners have a right to develop their land within the limits set by public land use regulations. Such regulations must, however, be legally defensible, leaving landowners a reasonable use of their land so as not to constitute a public taking of the land without payment of just compensation.

Some individuals maintain that since zoning ordinances and other land use regulations may legally be, and indeed, historically have been, amended to become more restrictive, or land has been "down-zoned," there are no development rights inherent in landownership, the owner being entitled only to a

continuation of the existing use. Others argue that where zoning and other public land use controls have been in place for a long period of time, the right to develop in accordance with such long-standing zoning regulations becomes effectively attached to the land and that removal of such development rights, rights which are commonly taken for granted by landowners, through down-zoning would constitute a "taking." While the latter position is frequently taken in a political context, as many local elected officials believe that such a position is fair and equitable, legally the Wisconsin Supreme Court has taken the position that a landowner has no vested right in zoning until proper development and/or building permit applications have been filed.

Ideally, land should be placed in zoning districts which allow urban development only where it is recommended in locally adopted land use plans and only at such time as the area concerned can be readily provided with basic urban facilities and services and a market demand for the proposed development is evident. Unfortunately, almost all of the then-rural area of Waukesha County was placed in what are, in effect, residential zoning districts about 40 years ago, even though such "pre-zoning" constituted poor planning and zoning practice even at that time. Some argue that the use of PDR or TDR techniques is an inappropriate response to such poor planning and zoning practices of the past and that with respect to the purchase of development rights in particular, the government should not "buy back" rights to develop land which were inappropriately held out under local zoning. Rather, these individuals maintain, consistent with the legal position of the Wisconsin Supreme Court noted above, that the inappropriate zoning should be changed politically. Others view PDR and TDR as potential tools for dealing with expectations created by past zoning practices, particularly within areas that are experiencing significant market demand for development.

Clearly, there is no widespread agreement on how, and under what circumstances, the principles underlying PDR and TDR techniques should be used, if at all. These techniques, however, have been proposed by some for application within Waukesha County to supplement more traditional approaches to open space preservation. A description of these techniques is presented here, recognizing that ultimately the extent of application of these controversial techniques within Waukesha County, if

permitted and encouraged by public actions, will be determined largely by the operation of the urban land market.

In the following text, the sale or transfer of development rights in agricultural land involves the separation from the land of an assumed qualified right to develop the land for nonagricultural use. Such an assumption, as noted above, is grounded in political, not legal, considerations. Under such arrangements, the landowner retains title to the land; can continue normal agricultural activities; and can sell or otherwise convey the land to others, although future use would be limited to farming or other open space uses. Where such "development rights" are sold, the landowner is reimbursed for the value of the development rights which the landowner relinquishes to the buyer.

The sale or other transfer of development rights in farmland could be used to supplement the agricultural zoning recommendations of the County land use plan. Within the County, purchase of development rights programs, as described below, should be considered for use as a farmland preservation technique only within the prime agricultural land areas, shown in grey on the recommended County land use plan map. The application of purchase of development rights would be grounded in a position that farming will not be economically viable in such areas over time; that the political position of the County and local governments concerned will be sympathetic to rezoning; and that, accordingly, purchase of such assumed development rights will be the only way, in the long-term, to preserve such agricultural land intact. The transfer of development rights technique, also described below, should be considered for use as an open space preservation technique only in the areas designated as "rural-density residential and other agricultural land," or the areas shown in white on the recommended County land use plan map. The application of transfer of development rights would be grounded in the position that the technique enables the cluster development concept to be more readily applied over large areas having multiple parcels.

It should be noted that the purchase and transfer of development rights techniques have also been utilized to ensure preservation of areas other than agricultural land. These include important natural resource features such as woodlands and wetlands, scenic views, historic places, and critical species habitat, among others.

Purchase of Development Rights: Programs for the purchase of development rights in agricultural lands, or PDR programs, involve the use of public or private funding to acquire assumed development rights of privately held lands. Under a PDR program, a landowner sells the development rights attendant to a parcel of land at a fair market price established by an appraisal process. These rights are relinquished and are not to be transferred to another parcel of land. A qualified appraiser estimates the fair market value of the property with and without the development rights, and the difference between the two estimates is the value of the development rights, or the amount to be paid to the landowner. Deed restrictions are commonly used to ensure that the lands concerned remain in agricultural or other open use. Such restrictions are attached to the land, and remain in effect regardless of future sale or other transfer of the land.

PDR programs may be administered and funded by state, county, or local units of government, private organizations, or combinations thereof. State-level funding or partial funding may be necessary because of the substantial cost of acquiring development rights in some areas. State funding is not a prerequisite, however, as evidenced by the establishment in 1994 of a \$2.6 million PDR program by Peninsula Township, Grand Traverse County, Michigan. Township residents there approved a 0.625 mill, 15-year property tax levy to purchase the development rights to about 2,000 acres of cherry orchards which were perceived to be a valuable economic resource to the area. The primary drawback attendant to PDR programs is the potentially high cost. The value of the development rights may, in some cases, approach the total value of the land.

Purchase of development rights provides assurance that the land will be permanently retained in open use. Landowners receive a potentially substantial cash payment, while retaining all other rights to the land, including the right to continue farming. The money paid to the landowner may be used for any purpose, such as debt reduction, capital improvements to the farm, or retirement income. Lands included in a PDR program remain on the tax roll and continue to generate property taxes, but the lands are assessed at the value for agricultural use. Since the land remains in private ownership, the public sector does not incur any land management responsibilities.

To provide insight into the potential for the use of the PDR technique in Waukesha County, the cost of

acquiring development rights associated with the prime agricultural lands recommended for preservation under the County land use plan was estimated. The plan recommends the preservation in agricultural use of a total of about 17 square miles, or 10,800 acres of prime agricultural lands. These lands lie in the City of Muskego and the Towns of Eagle, Oconomowoc, and Ottawa. Based upon recent land sales data provided by the Wisconsin Department of Revenue and by land developers active in Waukesha County, the average value of development rights for agricultural land within Waukesha County was estimated at about \$2,900 per acre. On the basis of that unit cost estimate, it may be concluded that the purchase of development rights for the 10,800 acres of prime agricultural land recommended for preservation would approximate \$31 million. If the development rights were acquired over a period of 20 years, the associated annual cost would approximate \$1.6 million. If such a PDR program were undertaken by the County and funded through the property tax, the resulting increase in the equalized property tax rate would approximate \$0.08 per thousand dollars of equalized property value. This would represent an increase of about 2.6 percent in the 1995 County property tax rate, from \$3.03 per thousand dollars of equalized value to \$3.11.

Transfer of Development Rights: Transfer of development rights (TDR) techniques involve the transfer of assumed development rights from one parcel of land to another. TDR techniques have the effect of removing the development potential from one parcel and increasing the development intensity permitted on another. When the parcels concerned are held by the same owner, the development rights are, in effect, simply transferred from one parcel to the other by the owner; when the parcels are held by different landowners, the transfer of development rights will necessarily involve a sale of rights from one owner to another, at fair market value.

Within Waukesha County, TDR techniques should be confined to land within the planned rural development areas shown on Map 91. Within these areas, TDR techniques could be used facilitate the transfer of residential development rights from "sending" parcels, which would remain in agricultural or other open space use, to "receiving" parcels, where additional residential development would be accommodated. In this regard, TDR techniques can help to achieve the overall recommended rural residential density by clustering, or concentrating, development in some areas, while maintaining other areas for

continued farming or other open use. The transfer of development rights techniques can be implemented only where accommodated under County or local zoning. Zoning arrangements related to the transfer of development rights are described later in this chapter.

Tax Incentives to Preserve Farmland

One of the most frequently raised objections to the use of zoning to preserve farmland in urbanizing areas is the high property-tax burden, which compounds the difficulty of keeping farming operations economically viable. The high property-tax burden in urbanizing areas is a result of the relatively high land value assessments reflecting the perceived development potential of the land, as well as rising property-tax rates which are required to provide basic urban services to the urban development in surrounding areas. The Wisconsin Legislature has taken two actions to lessen the property-tax burden faced by farmers in the State. In 1977, the Legislature enacted the Wisconsin Farmland Preservation Program, a program that combines planning and zoning provisions with tax incentives to promote the preservation of farmland. In 1995, the Legislature took an additional action to lessen the property-tax burden on farmers by mandating the "use-value" assessment of agricultural land, under which agricultural land will be assessed based solely on its value for farming, without regard for its development potential.

Wisconsin Farmland Preservation Program: The Wisconsin Farmland Preservation Program is intended to help counties and local units of government preserve farmland through local plans and zoning and to provide property-tax relief, in the form of State income-tax credits, to farmland owners who participate in the program. Owners of farmland in "urban" counties, including all counties in the Southeastern Wisconsin Region, are eligible to participate in the program if their land has been placed in a State-certified exclusive agricultural zoning district consistent with a County-adopted and State-approved agricultural land preservation plan, and if other program requirements, such as requirements with respect to the value of the farm commodities produced, are met.¹⁷ In 1994, about 125 landowners obtained zoning certificates enabling them to file for income-tax credits on a total of about 16,000 acres of farmland in Waukesha County under the program. The average tax credit for participating landowners in the County that year was \$1,205, or about 25 percent of the average participant's total property tax bill of \$4,750.

It is important to note that the exclusive agricultural zoning required as a condition for receipt of tax credits under the Wisconsin Farmland Preservation Program does not ensure the preservation of land held by participating farmers. Landowners can petition the concerned county or local unit of government for a change in zoning to accommodate development, although those who have claimed a tax credit are then liable to pay back a portion of the credits. Thus, even with the Farmland Preservation Program, the effectiveness of preserving farmland through exclusive agricultural zoning is dependent upon the level of commitment of the concerned county and local unit of government to such zoning.

Chapter 91 of the Wisconsin Statutes specifies that agricultural preservation plans shall be a component of, and be consistent with, any county development plan prepared under Section 59.97(3). Section 91.55 of the Statutes specifies that county agricultural preservation plans shall, at a minimum, include: a) statements of policy regarding preservation of agricultural lands, urban growth, the provision of public facilities, and the protection of significant natural resource, open space, scenic, historic, and architectural areas and b) maps identifying agricultural areas to be preserved, areas of special environmental, natural resource, or open space significance, and if any, areas proposed for transition from agricultural to other land uses.

In accordance with the aforementioned Statutes, the land use element of the Waukesha County development plan is intended to support the preparation of a new agricultural land preservation plan for the County. The current agricultural land preservation plan was adopted by the Waukesha County Board of Supervisors and approved by the State in 1984. That plan was prepared in accordance with Section 91.55 of the Wisconsin Statutes, which specifies the content of such plans. Specifically, with respect to Subsection (a) of Section 91.55, regarding

¹⁷A limited number of landowners in the County, in the Towns of Genesee, Merton, Summit, and Vernon, qualify for income-tax credits based upon long-term farmland preservation agreements with the State, rather than on the basis of exclusive agricultural zoning, as in the Towns of Eagle, Mukwonago, Oconomowoc, Ottawa, and Pewaukee, and the City of Muskego. The opportunity to qualify for tax credits in this manner was offered to landowners in urban counties between 1988 and 1991.

policies for preservation of agricultural lands, urban growth, provision of public facilities, and protection of significant natural resource, scenic, historic, and architectural areas, the objectives, principles, and standards set forth in Chapter IX of the Waukesha County development plan report provide the policy framework necessary to include in a new agricultural land preservation plan. With respect to Subsection (b), regarding the mapping of agricultural areas to be preserved, environmental, natural resource and open space areas, and transition areas, Map 92 identifies such areas and may be considered a point of departure for the preparation of a new County agricultural land preservation plan.

As shown on Map 92, areas identified for agricultural land preservation encompass about 17 square miles, or 3 percent of the total area of the County, while areas identified for transition to other uses, both urban and rural, encompass about 131 square miles, or about 23 percent of the total area of the County. Under the 1984 Waukesha County agricultural land preservation plan, agricultural land preservation areas encompassed about 170 square miles, while transition lands encompassed about 26 square miles.

The adoption of the Waukesha County development plan, as prepared under Section 59.97(3) of the Wisconsin Statutes, is not intended to constitute adoption of a new Waukesha County agricultural land preservation plan pursuant to the requirements set forth in Section 91.55 of the Statutes. Consequently, those owners of land located within the agricultural preservation or transition areas indicated on Map 92, and who otherwise meet the eligibility requirements of the Wisconsin Farmland Preservation Program, should continue to be eligible to receive income-tax credits under that program.

Use-Value Assessments: State legislation enacted in 1995 freezes the assessed value of agricultural land at current levels through 1996. After 1996, assessed values are to be reduced to "use" values over a ten-year period. Under this legislation, all agricultural land is to be assessed at use-value, regardless of zoning or market sales of land. Landowners who sell their land after owning the land for less than five years will be required to pay a penalty to the Wisconsin Department of Revenue in an amount equal to five percent of the difference between the sale price and the use-value of the land during the last year of ownership. Thus, while the new program may be expected to provide substan-

tial property-tax relief to all owners of farmland, it will do so without attaching any significant restrictions to the land.

A Disclaimer: While both tax incentive programs may be useful in helping to preserve prime agricultural land in the short term, neither program should be viewed as effective in the long term in Waukesha County, given a continuing active urban land market. A stable political commitment to sound zoning and implementation of an adopted land use plan is the only way to achieve the objective of preserving prime agricultural land.

Rural Area Planning and Zoning

Successful implementation of the recommended County land use plan depends to a large extent upon future efforts to maintain the overall rural character of lands in the planned rural development areas, particularly the areas identified as "rural-density residential and other agricultural lands," shown in white on the recommended plan map. Previous sections of this chapter have noted the additional planning efforts needed for, and the appropriate application of land use controls to, such areas. This section provides more detailed recommendations to facilitate the implementation of the County land use plan as it pertains to the rural development areas. The Regional Planning Commission has initiated work on the preparation of a local planning guide for the use of cluster development in rural areas. Expected to be completed in 1996, this planning guide will include an in-depth description of the cluster design alternative and the means for its implementation in rural areas.

Rural Area Planning: Under the recommended County land use plan, rural development areas have been identified in the Towns of Eagle, Delafield, Genesee, Lisbon, Merton, Mukwonago, Ottawa, Pewaukee, Summit, Vernon, and Waukesha; the Cities of Muskego and New Berlin; and the Villages of Menomonee Falls and Merton (see Map 91). The identified rural development areas currently consist primarily of nonprime agricultural lands, environmentally sensitive lands, and scattered unsewered residential development. The County land use plan recommends that new development in these areas be limited primarily to very low-density residential development. The plan encourages the use of residential cluster designs at an overall density of one dwelling unit per five acres, with dwelling units developed in clusters surrounded by agricultural and other open space. Such clustered dwelling units